

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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GREGORY J. THUMAN,

Plaintiff,

v.

**DECISION AND ORDER**  
13-CV-1087-A

TIMOTHY S. DEMBSKI,<sup>1</sup>  
SCOTT M. STEPHAN,  
PRESTIGE WEALTH MANAGEMENT FUND, LP,  
PRESTIGE WEALTH MANAGEMENT, LLC,  
MID-ATLANTIC CAPITAL CORPORATION,<sup>2</sup>  
RELIANCE FINANCIAL ADVISORS LLC,

Defendants.

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This case, alleging fraud, breach of fiduciary duty, negligence, and violations of various securities laws and regulations, was referred to Magistrate Judge Leslie G. Foschio, pursuant to 28 U.S.C. § 636(b)(1) for the conduct of pretrial proceedings.

On January 25, 2022, Magistrate Judge Foschio filed a Report and Recommendation (“R&R”) (Dkt. No. 127), recommending that Plaintiff Gregory J. Thuman’s motion for default judgment (Dkt. No. 115) against Prestige Wealth Management Fund, LP, Prestige Wealth Management, LLC, and Reliance Financial

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<sup>1</sup> Plaintiff’s motion for partial summary judgment on all claims asserted against Defendant Dembski was granted on May 10, 2021 (Dkt. No. 108) and the case was recommitted to Magistrate Judge Foschio for further proceedings with respect to the issue of damages.

<sup>2</sup> Defendant Mid-Atlantic Capital Corporation’s motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) was granted on May 10, 2021 (Dkt. No. 107), and the action was terminated as to that defendant.

Advisors LLC be either denied or dismissed as moot, and that the action be dismissed as to those three defendants. The R&R also recommends that the action as against Defendant Stephan be dismissed as moot, as requested by Plaintiff because Plaintiff has obtained a judgment against Defendant Stephan in a bankruptcy matter.

No objections to the R&R have been filed. Upon review of the R&R and the underlying record, it is hereby

**ORDERED**, pursuant to 28 U.S.C. § 636(b)(1) and for the reasons set forth in the R&R, the action as against Defendant Stephan is DISMISSED per Plaintiff's request, and it is hereby

**ORDERED** that the claims asserted against the unserved defendants, *i.e.*, Prestige Wealth Management Fund, LP, Prestige Wealth Management, LLC, and Reliance Financial Advisors LLC are DISMISSED based on Plaintiff's failure to timely serve the Amended Complaint on those defendants, and with prejudice as the relevant claims are time-barred, and in the alternative, the claims against the unserved defendants are DIMISSED *sua sponte* pursuant to Local Civil Rule 41(b) and the Court's inherent authority, based on Plaintiff's failure to prosecute such claims, and it is hereby

**ORDERED** that Plaintiff's motion for default judgment (Dkt. No. 115) is DENIED as MOOT in light of above, and in the alternative, the motion is DENIED because no entry of default was made and because Plaintiff did not serve the Amended Complaint asserting a new cause of action as against Prestige Wealth Management, LLC and Reliance Financial Advisors LLC; and it is hereby

**ORDERED** that this case is recommitted to Magistrate Judge Foschio for further proceedings.

**IT IS SO ORDERED.**

*s/Richard J. Arcara*  
HONORABLE RICHARD J. ARCARA  
UNITED STATES DISTRICT COURT

Dated: March 30, 2022